

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 20-25 of Remarks, filed January 14, 2010, with respect to the 35 USC 103 rejections in view of Gruzdev, Curry, Sakata, and Higgins have been fully considered and are persuasive. The 35 USC 103 rejections of claims 11, 13, 15, 18, 19, 21, 23, 25-37, and 67 have been withdrawn. However, new grounds of rejection under 35 USC 101 apply to claims 25 and 37.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 25 and 37 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims recite a computer-readable medium, which is not explicitly defined by the claim or the specification. The broadest reasonable interpretation of such a medium would include signals that are computer-readable. Regarding a computer program product as a signal, see MPEP 2106 which states:

For example, a claim reciting only a musical composition, literary work, compilation of data, >signal,< or legal document (e.g., an insurance policy) per se does not appear to be a process, machine, manufacture, or composition of matter. See, e.g., In re Nuijten, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007) (slip. op. at 18) ("A transitory, propagating signal like Nuijten's is not a process, machine, manufacture, or composition of matter." ... Thus, such a signal cannot be patentable subject matter. ").

4. If applicant would like to only claim statutory embodiments of the invention, it is suggested that applicant state that the medium of the claim is "non-transitory" in order to exclude signal embodiments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON M. RICHER whose telephone number is (571)272-7790. The examiner can normally be reached on weekdays from 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on (571) 272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Aaron M Richer/
Primary Examiner, Art Unit 2628
4/26/10